

**Initial Statement of Reasons for**  
**Proposed Amendments to California Code of Regulations,**  
**Title 18, Section 1505, *Morticians***

**SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS**

Current Law

Revenue and Taxation Code (RTC) section 6051 imposes California sales tax on retailers for the privilege of selling tangible personal property at retail. Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § (Reg.) 1700, subd. (a)(1).)

When sales tax does not apply, California use tax is imposed, measured by the sales price of property purchased from a retailer for storage, use, or other consumption in California. (RTC, §§ 6201, 6401.) The use tax is imposed on the person actually storing, using, or otherwise consuming the property. (RTC, § 6202.)

The term "retail sale" means a sale of tangible personal property for any purpose other than resale in the regular course of business. (RTC, § 6007, subd. (a)(1).) The term "seller" includes "every person engaged in the business of selling tangible personal property of a kind the gross receipts from the retail sale of which are required to be included in the measure of the sales tax." (RTC, § 6014.) Also, the term "retailer" includes "[e]very seller who makes any retail sale or sales of tangible personal property . . . ." (RTC, § 6015, subd. (a)(1).)

Federal and California law limit the application of California's sales and use taxes to transactions in interstate and foreign commerce. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1610, *Interstate and Foreign Commerce*, to generally prescribe the application of California's sales and use taxes to transactions involving the movement of tangible personal property into and out of California.

Also, federal and California law limit the application of California's sales and use taxes to transactions involving the United States (U.S.) Government. (RTC, §§ 6352, 6381.) And, the Board adopted Regulation 1614, *Sales to the United States and Its Instrumentalities*, to generally prescribe the circumstances under which gross receipts from the sale of tangible personal property to the U.S. Government and the consumption of tangible personal property purchased by the U.S. Government are exempt from sales and use tax under federal and California law.

In addition, California law provides that, in accordance with regulations prescribed by the Board, a deduction may be taken if a retailer has purchased property for some other purpose than resale, has reimbursed his or her vendor for sales tax or has paid the use tax with respect to the property,

and has resold the property prior to making any use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business. (RTC, § 6012). And, the Board adopted Regulation 1701, *Tax-Paid Purchases Resold*, to generally prescribe the circumstances under which a retailer may claim such a deduction.

Finally, the Board adopted Regulation 1505, *Morticians*, to provide specific guidance to morticians regarding the proper application of sales and use tax. The regulation explains when morticians are retailers and when they are consumers of tangible personal property for sales and use tax purposes. It also provides guidance to morticians on sales in interstate and foreign commerce, sales to the U.S. Government, treatment of cash advances, tax-paid purchases resold, and “pre-need agreements.” Regulation 1505’s provisions initially became effective August 1, 1933, they were amended and renumbered as Regulation 1505 in 1970, and they have not been amended since 1980.

### Proposed Amendments

#### *Need for Clarity*

Board staff determined that there were issues (or problems) within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)) with Regulation 1505 because:

- The terminology used in Regulation 1505 is outdated;
- The regulation does not reflect the current goods and services provided by the burial service industry;
- There have been changes in the interment allowance provided by the U.S. Government, which is specifically referred to in the regulation; and
- It is no longer necessary for the regulation to provide detailed guidance and examples regarding the application of tax to amounts burial service providers receive directly from a federal agency because recent procedural changes allow the U.S. Department of Veterans Affairs (VA) to pay death benefits directly to the surviving party, instead of the burial service provider.

#### *Interested Parties Process*

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to update Regulation 1505 to address the issues described above and a discussion paper explaining the draft amendments. Both were provided to interested parties.

As relevant here, the draft amendments added a new subdivision (a) to Regulation 1505 to define the terms “morticians” and “cash advances,” and renumbered the regulation’s current subdivisions. The draft amendments also added “memorial books and digital video discs” as examples of tangible personal property sold by morticians in renumbered subdivision (b)(1).

On January 27, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. No written comments were submitted prior to or at the interested parties meeting, however, staff received and worked with interested parties’ informal suggestions to refine the

draft amendments, including a suggestion to change the title of the regulation from “Morticians” to “Funeral Director.” Additionally, after the interested parties meeting, BTC staff received a letter dated February 16, 2015, from Sarah Adams, Vice President of Tax, Service Corporation International. The letter requested the Board consider an amendment to renumbered subdivision (b)(2) to include a reference to memorial books and DVDs that would mirror the BTC staff’s draft amendments to renumbered subdivision (b)(1), which Board staff incorporated.

*April 28, 2015 Business Taxes Committee Meeting*

Subsequently, staff prepared Formal Issue Paper 15-003 and distributed it to the Board Members for consideration at the Board’s July 28, 2015, BTC meeting. Formal Issue Paper 15-003 recommended that the Board propose to change the name of Regulation 1505 from “Morticians” to “Funeral Directors” and update all the references to “mortician” to refer to “funeral director” throughout the regulation. The change to the title of the regulation from “Morticians” to “Funeral Directors” was suggested by interested parties and BTC staff agreed this term is more indicative of the industry and the person responsible for reporting tax.

The formal issue paper recommended that the Board propose to add a new subdivision (a) to Regulation 1505, and renumber the regulation’s current subdivisions. The formal issue paper recommended that new subdivision (a) include a definition for the new term “funeral director,” and a definition for the term “burial,” which is used in the definition of the term “funeral director,” in order to update the regulation and provide clarity regarding the terms used throughout the regulation. The formal issue paper recommended that the Board propose to update the regulation to more succinctly refer to “cash advances,” instead of “accommodation cash advances.” The formal issue paper also recommended that the Board propose to include a definition for the term “cash advances” in subdivision (a) to provide additional clarity, add a new paragraph (2) to renumbered subdivision (c) to provide updated guidance regarding the application of tax to “cash advances,” renumber current subdivision (b)(2) as subdivision (c)(3), delete current subdivision (b)(4), which provides less up-to-date guidance regarding the application of tax to accommodation cash advances, and renumber current subdivision (b)(5) as subdivision (c)(4).

The formal issue paper recommended that the Board propose to add language to renumbered subdivision (b)(1) and (2) to update the regulation and clarify when funeral directors are the retailers and consumers of specific items, such as memorial books and DVDs. The formal issue paper recommended that the Board propose to rephrase the last sentence in renumbered subdivision (b)(1) to make it grammatically correct, and delete the footnote from renumbered subdivision (b)(1), which was intended to provide additional notice regarding a 1972 amendment to Regulation 1505, but is no longer relevant. The formal issue paper also recommended that the Board propose to add a new paragraph (3) to renumbered subdivision (b) to provide an updated and more helpful example of how tax applies to the items on a typical funeral director’s invoice using a current tax rate.

Additionally, the formal issue paper explained that Regulation 1505, subdivision (b)(2) currently states, in part, “[e]ffective August 1, 1973, the United States Veterans Administration will pay an interment allowance, up to \$150, in addition to the regular funeral and burial allowance for

veterans.” However, the interment allowance provided by section 2303(b) of title 38 of the United States Code has been increased several times since Regulation 1505 was last amended, section 2303(b) currently provides that the interment allowance is \$700, and section 2303(c) now requires the VA to annually increase the interment allowance to reflect increases in the consumer price index. Accordingly, the formal issue paper recommended that the Board propose to delete the language in renumbered subdivision (c)(3) that refers to a specific dollar amount for the interment allowance so there is no future need to amend the regulation each time the interment allowance changes. Also, the United States “Veterans Administration” was renamed the “Department of Veterans Affairs” since Regulation 1505 was last amended in 1980. So, the formal issue paper also recommended that the Board propose to update Regulation 1505 by adding “Government” to the end of the title of renumbered subdivision (c)(3), changing the references to the “United States” to “U.S.” in renumbered subdivision (c)(3), and revising the remaining references to the “Veterans Administration” to refer to the “Department of Veterans Affairs” in renumbered subdivision (c)(3).

Furthermore, effective, July 7, 2014, the VA amended its regulations regarding the payment of burial benefits to authorize payments of burial and funeral costs at the maximum amount authorized by law through automated systems directly to an eligible surviving spouse or any other eligible person. (38 C.F.R. § 3.1702 (2014).) With these new federal procedures, there will rarely be a payment directly by the VA to a funeral director. Accordingly, the formal issue paper recommended that the Board delete, as unnecessary, current subdivision (b)(3) of the regulation, which provides examples that demonstrate how to prorate U.S. Government payments.

Lastly, the formal issue paper recommended that the Board propose to make other minor changes to Regulation 1505 for grammar and gender neutrality.

At the conclusion of the Board’s discussion of Formal Issue Paper 15-003 during the April 28, 2015, BTC, the Board Members unanimously voted to propose the amendments to Regulation 1505 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1505 are reasonably necessary for the specific purpose of clarifying and updating the regulation to address the issues (or problems) referred to above.

The Board anticipates that the proposed amendments to Regulation 1505 will promote fairness and benefit funeral directors, consumers, Board staff, and the Board by providing updated guidance about how tax applies to the goods and services currently provided by the burial service industry.

The proposed amendments to Regulation 1505 were not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1505 or the proposed amendments to Regulation 1505.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-003, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its April 28, 2015, BTC meeting in deciding to propose the amendments to Regulation 1505 described above.

## ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1505 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1505 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

## INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The proposed amendments clarify the terms used in the regulation, update the guidance currently provided in the regulation so that the regulation corresponds with current industry practice, and provide a current example of how tax applies to a typical transaction using a current tax rate. The proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law (RTC, § 6001 et seq.) or Regulation 1505, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1505 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1505 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1505 will not affect the benefits of

Regulation 1505 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 1505 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1505 may affect small businesses.